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No. 50

In the Supreme Court of the United States

October Term, 1954

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 50

WILLIAM A. BISSO, JR., RECEIVER, NEW ORLEANS COAL AND BISSO TOWBOAT CO., PETITIONER

v.

INLAND WATERWAYS CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The court below has held valid and enforceable clauses in a towage contract placing all risks of the operation on the craft to be towed and declaring the master and crew of the towing vessel to be servants of the tow. Clauses such as these are in common use by towing companies throughout the United States, and the issues of their scope and validity, involving as they do critical questions of judicial policy towards the abdication of responsibility for tortious conduct, are of major importance to the entire shipping industry. Similar provisions have been before this Court three times in the past seventy-five years: *The*

Syracuse, 12 Wall. 167, *Compania de Navegacion Interior* v. *Fireman's Fund Insurance Co.,* 277 U. S. 66, *Sun Oil Co.* v. *Dalzell Towing Co.,* 287 U. S. 291. These opinions, however, have been given conflicting interpretations by the lower courts and by commentators.* Only this Court can now render a definitive reading of these decisions and settle the validity of a common practice affecting an entire industry which is of peculiar concern to this Court.

An unusual opportunity to bring order to this area of the law is presented at this time by the pending petitions for writs of certiorari in this case and in *Boston Metals Co.* v. *S. S. Winding Gulf,* No. 70, October Term 1954, and by a petition which will shortly be filed by the United States, in *Neilson, as Owner of the Tug Dauntless #6* v. *United States,* 209 F. 2d 958 (C. A. 2). Together, these three cases present the issue of the validity and effect of the disputed clauses in actions (1) by the tow against the tug, (2) by a third party against the tow, and (3) by the tug

*Compare, for example, the decision of the Fifth Circuit below, 211 F. 2d 401, with those of the Ninth Circuit in *Mylroie* v. *British Columbia Mills Tug and Barge Co.,* 268 Fed. 449, and *Alaska Commercial Co.* v. *Williams,* 128 Fed. 362. There is, moreover, a possibility of internal inconsistency in the decisions of this Court. See the opinion of the district court below (R. 35–40). The uncertain state of the law is emphasized by the fact that of two leading authors on admiralty, one regards the clauses as valid, 1 *Benedict, Admiralty* § 100 (6th ed. 1941), and the other regards them as invalid, *Robinson, Admiralty* 664, 672 (1939).

against the tow. It may be noted that the United States is peculiarly affected by the confusion which exists in this area, as exemplified by the opposite views which it represented below in *Neilson* (the tow) and the instant case (the tug). This circumstance itself is indicative, we believe, of the necessity for a clear and authoritative rule. Consequently, we do not oppose the granting of the petition for a writ of certiorari.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

JUNE 1954.

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